

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

<b>NATIONAL LABOR RELATIONS BOARD</b>	:	
	:	
	:	
<b>Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>NO. 16-3415</b>
	:	
<b>EYM KING OF MISSOURI, LLC,</b>	:	
	:	
<b>Respondent.</b>	:	

**RESPONDENT’S MOTION FOR LEAVE  
TO FILE OUT OF TIME**

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT:

1. Respondent EYM King of Missouri, LLC (“Respondent”) files this Motion for Leave to File Out of Time to file Respondent’s Response to the Order to Show Cause Regarding Petition of the National Labor Relations Board for Adjudication in Civil Contempt and for Other Civil Relief (“Response”) one day after the requested date for response.

2. This Court entered a judgment in this case on June 21, 2017 and issued a mandate on August 14, 2017. John Ross was counsel of record for Respondent.

3. The undersigned counsel was retained by Respondent on or about July 12, 2017, after the judgment, to assist with compliance. Respondent has filed no additional documents in this action, and John Ross is still listed as counsel.

4. Respondent was the Petitioner in another NLRB case in this Court, No. 17-1944. John Ross was counsel for Respondent in that case as well. The undersigned counsel was retained on or about August 28, 2017 in Case No. 17-1944 and filed a notice of appearance in that case on September 1, 2017. After obtaining an unopposed extension, the undersigned filed a reply brief in Case No. 17-1944. The case was set for submission on March 14, 2018.

5. On February 28, 2018, the National Labor Relations Board (“NLRB” or “Petitioner”) filed its Petition for Adjudication in Civil Contempt and for Other Civil Relief (“Petition”) in this case.

6. The same day, the Court’s clerk issued an Order requiring Respondent to show cause why Respondent should not be held in civil contempt for allegedly failing to comply with this Court’s June 21, 2017 judgment. The Order required a response within 21 days of the Order’s February 28, 2018 issuance.

7. As Respondent denies that it is in civil contempt, it requested that the undersigned prepare the Response to file with this Court. However, when the undersigned counsel went to file the Response on March 21, 2018, he discovered

that his appearance was not on file in this case, only in Case No. 17-1944.

Consequently, Respondent filed the required notice of appearance in this case.

Unfortunately, because the notice of appearance was filed after the clerk's office had closed, the notice of appearance was not approved the same day, and Respondent could not file the Response on March 21, 2018.

8. The notice of appearance in this case has been promptly approved by the clerk's office on March 22, 2018. After the undersigned's short discussion with the clerk's office regarding the situation, Respondent now requests that it be allowed to file the Response one day after its initial efforts on March 21, 2018. Respondent does not believe any prejudice will result to any party in this case.

9. Finally, the requested extension is sought not for the purpose of delay, but in the interest of justice.

WHEREFORE, Respondent respectfully requests that the Court grant Respondent's motion for an additional day to file its Response, to and including March 22, 2018.

Respectfully submitted,

/s/ Douglas C. Bracken

Douglas C. Bracken

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**ATTORNEYS FOR RESPONDENT  
EYM KING OF MISSOURI, LLC**

Dated March 22, 2018

### **CERTIFICATE OF CONFERENCE**

I hereby certify that on March 22, 2018, I attempted via email and by telephone to confer regarding this motion with Pia Winston, counsel for Petitioner, who was not available. Her voicemail stated it was not set up. I have not received a response to my email. Therefore, the motion is presented to the Court for determination.

/s/ Douglas C. Bracken

Douglas C. Bracken

### **CERTIFICATE OF SERVICE**

I hereby certify that on March 22, 2018, I electronically filed the foregoing with the Clerk for the Court of the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system. I further certify that this document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Douglas C. Bracken

Douglas C. Bracken